

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DANIEL S. GREEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-549-SLR
	)	
	)	
RADCLIFF CHARLES,	)	
BRADFORD APA, LYLE BRYANT,	)	
HORACE DUGGINS, GARLAND	)	
WILLIAMS and Cpl. DANELLI	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION FOR**  
**ENLARGEMENT OF TIME**

COME NOW, defendants Bradford Apa, Lyle Bryant, Horace Duggins, and Garland Williams ("Defendants"), by and through undersigned counsel, and hereby move this Honorable Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, to enter an Order enlarging the time within which to complete fact discovery in the above-captioned case. In support of their motion, Defendants allege as follows:

1. On or about July 29, 2005, Daniel Green ("Plaintiff"), an inmate who was at that time incarcerated, commenced an action by forwarding the complaint and a request to proceed *in forma pauperis* to the United State District Court for the District of Delaware. (D.I. 1, 2). His Complaint was dismissed with leave to amend and an amended Complaint was filed on February 10, 2006. (D.I. 10, 11). On March 6, 2006, the Court issued a service order. (D.I. 13). Defendants Answered on May 19, 2006. (D.I. 24).

2. The Court entered a Scheduling Order on July 26, 2007. (D.I. 36). The Order set

the fact discovery deadline for February 28, 2008 and the dispositive motion deadline for March 31, 2008.

3. On January 28, 2008, Defendants sent Requests for Production of Documents and Interrogatory Requests to Plaintiff's address listed on the docket as 921 Bennett St., Wilmington DE, 19801. (D.I. 40, 41). To date, Plaintiff has not responded to the discovery requests.

4. On February 5, 2008, Defendants sent correspondence to Plaintiff requesting that he contact counsel for the defendants to arrange a mutually agreeable date for his deposition. (Exhibit "A"). To date, Plaintiff has not responded to the letter or otherwise communicated with defense counsel.

5. On February 22, 2008, Defendants sent a second letter to Plaintiff advising him of the impending discovery deadline and requesting that he contact counsel to set a mutually agreeable date for his deposition. (Exhibit "B"). The letter also advised that the deposition would be set on date without his input. To date, Plaintiff has not responded to the letter or otherwise communicated with defense counsel.

6. On February 28, 2008, Plaintiff filed an address update with the Court indicating that he has been re-incarcerated and is currently housed at the Howard R. Young Correctional Institution. Plaintiff indicated that he has been re-incarcerated since February 22, 2008. Notably well after the February 5<sup>th</sup> letter was sent to Plaintiff. (D.I. 42).

7. Due to Plaintiff's failure to respond to discovery requests or cooperate with counsel for Defendants to arrange a deposition date, Defendants have been unable to complete discovery within the Court's deadline and have been prejudiced in their preparation of a defense.

8. Defendants thus seek an enlargement of 60 days to the discovery and dispositive motion deadlines to complete discovery.

WHEREFORE, pursuant to Federal Rule 6(b), for the hereinabove reasons, Defendants respectfully request that this Honorable Court grant Defendants request for an extension of time and set the deadline for the completion of fact discovery to April 28, 2008 and May 28, 2008 for the completion of dispositive motions.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Stacey Xarhoulakos  
Stacey Xarhoulakos, ID#4667  
Deputy Attorney General  
Department of Justice  
State of Delaware  
Carvel State Office Building  
820 North French Street, 6th fl.  
Wilmington, DE 19801  
(302) 577-8400

Date: February 28, 2008

*Attorney for Defendants*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF DELAWARE**

DANIEL S. GREEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-549-KAJ
	)	
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HORACE DUGGINS, GARLAND	)	
WILLIAMS and Cpl. DANELLI	)	
	)	
Defendants.	)	

**16.5 CERTIFICATE OF COUNSEL**

In compliance with Local Rule of Civil Procedure 16.5, counsel for the Defendants making the request for enlargement of time to complete discovery files this Certificate and states:

I certify that the Defendants have been provided with copies of the Motion for Enlargement of Time and that service has been sent by regular mail.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Stacey Xarhoulakos  
Stacey Xarhoulakos, ID#4667  
Deputy Attorney General  
820 N. French Street, 6th floor  
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(302) 577-8400  
stacey.xarhoulakos@state.de.us  
*Attorney for Defendants*

Date: February 28, 2008

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Plaintiff,	)	
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HORACE DUGGINS, GARLAND	)	
WILLIAMS and Cpl. DANELLI	)	
	)	
Defendants.	)	

**ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_, 2008,

**WHEREAS**, Defendants having requested an enlargement of time of sixty (60) days in which to complete fact discovery and to file dispositive motions; and

**WHEREAS**, there being good cause shown for the granting of such motion;

**IT IS HEREBY ORDERED**, that Defendants' Motion for Enlargement of Time be granted and the parties shall complete fact discovery on or before April 28, 2008 and shall file dispositive motions by May 28, 2008.

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United States District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2008, I electronically filed *Defendants' Motion for an Enlargement to the Discovery Deadline* with the Clerk of Court using CM/ECF. I hereby certify that on February 28, 2008, I have mailed by United States Postal Service, the document to the following non-registered party:

Daniel Green  
SBI # 320086  
Howard R. Young Correctional Institution  
P.O Box 9561  
Wilmington, DE 19809

/s/ Stacey Xarhoulakos  
Stacey Xarhoulakos (I.D. 4667)  
Deputy Attorney General  
Department of Justice  
820 N. French St., 6<sup>th</sup> Floor  
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Attorney for Defendants